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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2007 of 2005
Date of decision: 29.10.2007

Gurudwara Sahib Sant Baba Sunder Singh Ji and another

...Appellants

Versus

Govt. High School, Rasanheri and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. L.N.Verma, Advocate for the appellants.

Mr. Ram Lal Gupta, Additional Advocate General, Punjab

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RAJESH BINDAL, J.

The plaintiffs are in second appeal before this Court against the concurrent findings of fact by both the Courts below dismissing the suit filed by the appellants/plaintiffs for declaration to the effect that they are owners in possession in respect of land alongwith construction etc. comprised in Khata No.67/76 Khasra No.9/26 measuring 4 Kanals 18 Marlas situated in village Rasanheri, Tehsil Kharar, District Ropar and further the entries in the revenue record showing the same as "Gair Mumkin High School' be declared as illegal. Further challenge is to the judgment and decree dated September 6, 1993 suffered by respondent no.2 in favour of respondent No.1 (defendants in the suit).

On appreciation of the material produced on record by the parties in the form of Jamabandis from the year 1963-64 onwards alongwith Khasra Girdawaries, it was found that property in dispute was shown to be in ownership of 'Gurudwara Sahib Deh Haja Ba Itmam' and the possession is shown of 'Makbuja Middle School Deh' The Gurudwara as shown in the ownership column of the revenue record produced on record was impleaded as defendant no.2 in the suit, is said to be the oldest Gurudwara in the

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village. Admittedly Gurudwara set up by the appellants/plaintiffs came into existence in the year 1985-86. The claim set up by the appellants/plaintiffs to the effect that they became owner of the property in dispute by way of sale deed in their favour was also found to be misconceived for the simple reason that no material/sale deed was produced on record to show the transfer of the property in its favour. Even the witnesses produced by the appellants/plaintiffs admitted that the school children studied under the mango trees and the Baba Sunder Singh had got constructed two rooms for the school. It has further come on record that Kirtan used to be held on a 'Thada', which actually is the stage of the school.

Even in challenge to the decree passed by the Civil Court on September 6, 1993 also, the appellants/plaintiffs failed for the simple reason that once it was found that respondent no.2 Gurudwara was the owner of the property, it could very well suffer the decree in favour of respondent no.1. Even otherwise the transfer of the property by respondent no.2 Gurudwara in favour of respondent no.1 school is meant for public use and for the welfare of residents of the village. Once the decree was held to be valid, no defect could possibly be found in the mutation sanctioned on the basis thereof. The findings of the trial Court were confirmed by the Lower Appellate Court.

Learned counsel for the appellants submitted that findings recorded by both the Courts below are perverse and deserve to be set aside. However, he could not refer to any material on record which has either been misread or not considered by both the Courts below. The plea set up by them regarding the sale of the property was not corroborated by any evidence. Still further the submission was that once it is found that they are in possession of the property, they could be dispossessed only in due course of law is misconceived for the simple reason that both the Courts below have concurrently found on the basis of material on record that property is shown to be in the ownership of respondent no.2 Gurudwara and in the column of possession the school is mentioned. Even the witnesses produced by the appellants also corroborated that version and as such the claim that appellants are in possession of the property is also not found by

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the Courts below. Even the witnesses produced by the appellants also did not support their case.

For the reasons mentioned above, I do not find any substantial question of law arises in this appeal and the same is dismissed.

October 29, 2007 **(Rajesh Bindal)**
Pka **Judge**